

Serial No.: 10/773,242  
Docket No.: 956-1001  
Amendment dated: August 8, 2007  
Reply to the Office Action of May 9, 2007

## **REMARKS**

### **Introduction**

Upon entry of the foregoing amendment, claims 1-26 are pending in this application. Claims 1-3, 10, 13 and 21 have been amended herein. No new matter is being presented. In view of the following remarks, reconsideration and allowance of all the pending claims are requested.

### **Objections**

#### **Specification**

The Examiner has objected to a portion of the specification under 37 C.F.R. 1.57(f). To date, Applicant has not relied upon any material incorporated by reference as a basis for overcoming a rejection of any claim, thus this objection, to date, is moot.

### **Rejection under 35 USC §112**

Claims 2 and 3 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Without conceding to the arguments of the Examiner, but in the interest of further prosecution of this application, Applicant has amended these claims to more particularly recite the respective inventions. Reconsideration and withdrawal of the rejection of these claims is respectfully requested in light of these amendments.

### **Rejection under 35 USC §102**

Claims 13 and 20-25 have been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,947,833 to Yamasaki (hereinafter "Yamasaki").

Contrary to the assertions by the Examiner, Yamasaki does not teach or disclose at least a "thermotherapy apparatus for pressurizing and **fomenting** the spine of a user" as required by

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currently recited independent claims 13 and 21. The wording of these claims prior to the instant amendments to these claims clearly states that heat is used as part of the therapy to the spine, via the word "thermotherapy" recited in each claim. However, in order to advance prosecution of the application, these claims have been amended to more clearly describe operations performed by the apparatus of the present invention as claimed in independent claims 13 and 21. Regarding this feature, at best, Yamasaki illustrates a massaging device which massages certain muscles of an individual coming into contact with the Yamasaki device (Yamasaki col.3, lns. 47-58), but there is no teaching or suggestion of at least using heat supplied by the device as part of the massage process (fomenting). Therefore, it is respectfully submitted that independent claims 13 and 21 are allowable over Yamasaki, and withdrawal of this rejection and allowance of these claims are respectfully requested.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as contained in the...claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). "The elements must be arranged as required by the claim..." In re Bond, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990). See MPEP 2131. Further, in the event that the Office Action is relying on the theory of inherency in any manner, "the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied art." Ex parte Levy, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original). See also MPEP 2112.

Furthermore, Applicant respectfully submits that for at least the reason that each of dependent claims 20 and 22-25 depend from independent claims 13 and 21, respectfully, and therefore contain all of the features of currently recited claims 13 and 21, these claims are also patentable over Yamasaki. Accordingly, withdrawal of the rejection of dependent claims 20 and 22-25, and allowance of these claims, are respectfully requested.

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In view of the above comments, withdrawal of the rejection of claims 13 and 20-25 and allowance of these claims are respectfully requested.

### **Rejection under 35 USC §103**

Claim 1 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Yamasaki in view of U.S. Patent No. 2,461,102 to Ackerman (hereinafter "Ackerman"). Reconsideration and withdrawal of this claim are respectfully requested for at least the following reasons.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim elements. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). Since for the reasons given below, neither Yamasaki nor Ackerman, either alone or in combination with one another, teach or suggest each element as presently recited in independent claim 1, neither Yamasaki nor Ackerman, either alone or in combination with one another, can be properly used to reject independent claim 1 under 35 U.S.C. § 103. Therefore, it is respectfully submitted that independent claim 1 is allowable over Yamasaki and Ackerman, either alone or in combination with one another, and withdrawal of this rejection and allowance of this claim are earnestly solicited.

Regarding independent claim 1, Yamasaki does not teach or suggest at least the feature a "personal thermotherapy instrument for pressurizing and fomenting the spine of a user." Likewise, the feature of a "foot thermo-pressure plate" is not found in Yamasaki or Ackerman. The Examiner concedes in the Office Action at Pg. 4 that "Yamasaki does not disclose a foot pressure plate." For at least these reasons, Applicant respectfully submits that this claim is

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allowable over the cited references and requests reconsideration and withdrawal of the rejection of this claim.

Claim 2 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Yamasaki in view of U.S. Patent No. 2,461,102 to Ackerman and further in view of U.S. Patent No. 5,165,390 to Fleetwood (hereinafter "Fleetwood"). Neither Yamasaki, Ackerman, nor Fleetwood teach or suggest at least a "personal thermotherapy instrument for pressurizing and fomenting the spine of a user," as presently recited. Likewise, the feature of a "foot thermo-pressure plate" is not found in Yamasaki or Ackerman or Fleetwood.

Additionally, the features of currently recited claim 2 wherein "the spinal corrector and the foot thermo-pressure plate are provided each being disposed on a separate first assembly of the folding type frame where each first assembly is attached to the folding type frame, wherein the thermotherapy instrument also includes a separation unit adapted to be separated from the folding type frame, the separation unit having an upper portion and a lower portion wherein a middle assembly is connected with a second assembly on each separation unit portion, and wherein at least a portion of the separation unit is adapted to externally expose the spinal corrector" are not taught or suggest in Yamasaki or Ackerman (conceded in Office Action, Pg. 5), nor are they taught or suggested in Fleetwood. Regarding this feature, Fleetwood illustrates side panels 44, 46 and a single subassembly 26 which are capable of being removed from a framework 18, but the recited interrelation of the features for a separation unit as currently recited in claim 2 are not found at any point in Fleetwood. Therefore, it is respectfully submitted that claim 2 is allowable over Yamasaki and Ackerman and Fleetwood, either alone or in combination with one another, and withdrawal of this rejection and allowance of this claim are earnestly solicited.

Claims 4 and 10 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Yamasaki in view of Miller et al. (hereinafter "Miller"). Neither Yamasaki nor Miller teach or suggests at least the features of currently recited claims 4 and 10 each of which includes the features of currently recited independent claim 1 for a "personal thermotherapy instrument for

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pressurizing and fomenting the spine of a user.” Likewise, the additional feature in claims 4 and 10 of a “thermo-pressure plate” is not found in either Yamasaki or Miller. Since these features are not found in the references cited, Applicant respectfully requests reconsideration and withdrawal of the rejection of these claims, and allowance of these claims is earnestly solicited.

Claims 5, 6 and 19 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Yamasaki in view of U.S. Patent No. 6,705,234 to Miller et al. (hereinafter “Miller”) and further in view of U.S. Patent No. 4,303,018 to Lehmann. Neither Yamasaki, Miller, nor Lehmann teaches or suggests the feature of currently recited claims 5, 6 and 19 each of which includes the features of currently recited independent claims 1 and 13 for a” personal thermotherapy instrument/apparatus for pressurizing and fomenting the spine of a user.” Likewise, the additional feature of these claims for a “thermo-pressure plate” is not found in Yamasaki, Miller, or Lehmann. Since at least these features are not found in the references cited, Applicant respectfully requests reconsideration and withdrawal of the rejection of these claims and their allowance are earnestly solicited.

Claims 7, 8 and 18 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Yamasaki in view of U.S. Patent No. 6,705,234 to Miller et al. (hereinafter “Miller”) and further in view of U.S. Patent No. 5,283,919 to Grant. Neither Yamasaki, Miller, nor Grant teach or suggest the features of currently recited claims 5, 6 and 19 each of which includes the features of currently recited independent claims 1 or 13 for a” personal thermotherapy instrument/apparatus for pressurizing and fomenting the spine of a user.” Likewise, the additional feature of these claims for a “thermo-pressure plate” is not found in Yamasaki, Miller, or Grant. Since, at a minimum, these features are not found in the references cited, Applicant respectfully requests reconsideration and withdrawal of the rejection of these claims, and their allowance are earnestly solicited.

Claims 9 and 12 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Yamasaki in view of U.S. Patent No. 6,705,234 to Miller and further in view of U.S. Patent

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No. 3,884,160 to Gutierrez. Neither Yamasaki, Miller, nor Gutierrez teach or suggest the features of currently recited claims 9 and 12 each of which includes the features of currently recited independent claims 1 and 10, respectively, for a "personal thermotherapy instrument/apparatus for pressurizing and fomenting the spine of a user." Likewise, the additional feature in these claims for a "thermo-pressure plate" is not found in Yamasaki, Miller, or Gutierrez. Since at least these features are not found in the references cited, Applicant respectfully requests reconsideration and withdrawal of the rejection of these claims and their allowance are earnestly solicited.

Claim 11 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Yamasaki in view of U.S. Patent No. 6,705,234 to Miller and further in view of U.S. Patent No. 2,461,102 to Ackerman. Neither Yamasaki, Miller, nor Ackerman teaches or suggests the feature of currently recited claim 11, which includes at least the features of currently recited independent claim 10 for a "personal thermotherapy instrument for pressurizing and fomenting the spine of a user." Likewise, the additional feature of this claim for a "thermo-pressure plate" is not found in Yamasaki, Miller, or Ackerman. Since, at a minimum, these features are not found in the references cited, Applicant respectfully requests reconsideration and withdrawal of the rejection of these claims and their allowance are earnestly solicited.

Claims 14, 15 and 17 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Yamasaki in view of U.S. Patent No. 6,705,234 to Miller. Neither Yamasaki nor Miller teach or suggest at least the feature of currently recited claims 14, 15 and 17 each of which includes the features of currently recited independent claim 13 for a "personal thermotherapy apparatus for pressurizing and fomenting the spine of a user." Since this feature, at a minimum, is not found in the references cited, Applicant respectfully requests reconsideration and withdrawal of the rejection of these claims and their allowance are earnestly solicited.

Claim 16 has been rejected under 35 U.S.C. §103(a) as being unpatentable over

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Yamasaki in view of U.S. Patent No. 6,705,234 to Miller and further in view of U.S. Patent No. 2,461,102 to Ackerman. Neither Yamasaki, Miller, nor Ackerman teach or suggest at least the features of currently recited claim 16, which includes the features of currently recited independent claim 13 for a "personal thermotherapy apparatus for pressurizing and fomenting the spine of a user." Since, at a minimum, this feature is not found in the references cited, Applicant respectfully requests reconsideration and withdrawal of the rejection of this claim and its allowance are earnestly solicited.

Claim 26 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Yamasaki in view of U.S. Patent No. 2,461,102 to Ackerman. Neither Yamasaki nor Ackerman teach or suggest the feature of currently recited claim 26, which includes the features of currently recited independent claim 21 for a "personal thermotherapy apparatus for pressurizing and fomenting the spine of a user." Since, at a minimum, this feature is not found in the references cited, Applicant respectfully requests reconsideration and withdrawal of the rejection of this claim and its allowance are earnestly solicited.

### **Conclusion**

It is respectfully submitted that a full and complete response has been made to the outstanding Office Action and, as such, there being no other objections or rejections, this application is in condition for allowance, and a notice to this effect is earnestly solicited.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided below.

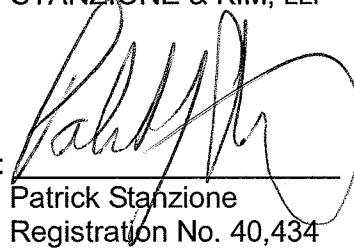
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If any further fees are required in connection with the filing of this amendment, please charge the same to our Deposit Account No. 502827.

Respectfully submitted,

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